



POLICE DEPARTMENT

June 09, 2009

MEMORANDUM FOR: Police Commissioner

Re: Captain Emilio Melendez
Tax Registry 898059
44 Precinct
Disciplinary Case No. 83323/07

The above-named member of the Department appeared before me on February 17, 2009, February 18, 2009 and February 20, 2009, charged with the following:

1. Said Captain Emilio Melendez, while assigned to the 42nd Precinct, on or about November 10, 2006, while on duty, in or about the 42nd Precinct Stationhouse, Bronx County, did engage in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Captain did fail and neglect to conduct a thorough and complete investigation into a vehicular accident that had been reported to him by members of the service under his supervision. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT–PROHIBITED CONDUCT
GENERAL REGULATIONS

The Department was represented by David H. Green, Esq., Department Advocate's Office, and the Respondent was represented by Louis C. La Pietra, Esq.

The Respondent, through his counsel, entered a plea of Not Guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Not Guilty.

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Introduction

The Respondent was originally charged with “having been informed by other uniform members of the service under said Captain’s supervision that they had been involved in an ‘RMP’ accident earlier that day and that they had spoken with and obtained required information from the operator of the other vehicle involved in the accident, said Captain wrongfully did instruct said other members of the service to prepare a ‘Complaint Report’ (PD313-152) alleging criminal mischief committed by an unknown perpetrator instead of an ‘Accident Report’...” The charge was then amended to reflect the current allegation of failing to conduct a thorough and complete investigation into the vehicular accident.

SUMMARY OF EVIDENCE PRESENTEDThe Department’s Case

The Department called Police Officer Brelin Germosen and Sergeant Isaias Grullon as witnesses.

Police Officer Brelin Germosen

Germosen, a six-and-a-half-year member of the Department, is currently assigned to the 42 Precinct. He stated that on November 10, 2006, he was working as the driver for Sergeant Grullon during a tour of 1500 by 2335 hours. At one point during that tour, he and the sergeant went to the location of Vyse Avenue in the Bronx regarding a female missing person. When they arrived at the location, Germosen double-parked his vehicle, an unmarked RMP, because there were no available parking spots at that time. He stated that the RMP was double-parked on the right-hand side of the street facing north and that

there was enough room for other vehicles to pass on the left-hand side. When asked how much space he had left between his double-parked car and the adjacent lane for traffic, he stated that there was enough room for normal traffic to pass.

Germosen stated that when they arrived at the location, they went inside the building to an apartment. He stated that Officers Valenzuela and Middleton were already at the location. He did not remember exactly how long they stayed in the apartment but it was approximately 20 minutes. At one point, all of the officers exited at the same time going down the stairs of the building. As they exited the building, he "saw, actually a truck trying to squish down the road. A delivery truck. It was oversize. It was big, not the usual traffic that goes around that street." He stated that the driver of the truck was trying to "squished between the parked vehicles on the left-hand side and into the RMP parked on the right-hand side." He then heard the plastic mirror snap off of the vehicle. When he observed the truck "squishing" by his vehicle he was still standing on the steps of the building.

Germosen ran toward the vehicle and was yelling for the driver to stop. He stated that, at that point, they were trying to get the truck out from between the RMP and the other parked vehicle.

Germosen then asked the truck driver for his driver's license and registration, because it was a vehicle accident and he needed to file a Police Accident Report (PAR). When asked if he was actually filling out a PAR at the time, he stated "Yes." He also asked the truck driver for his phone number and noted that the truck driver complied with all his requests for information. Germosen stated that the truck driver told him that he was making deliveries in regard to some furniture in the neighborhood. He stated that

Grullon also had a conversation with the truck driver but he did not know what that conversation consisted of because he "was more involved in the paperwork." He further stated: "When I asked him, for the information, when we got in the vehicle, by the time we got in the vehicle, then I started, like, to fill out paperwork."

At one point they were able to get the truck and the RMP separated from each other. Germosen and Grullon went back to the station house to finish the paperwork and to get a camera because they did not have one in their RMP. He stated that the problems he had in driving the vehicle back to the station house were "visual problems. It's kind of difficult to drive the RMP missing a mirror, especially that one." The main purpose for going back to the station house was to get a camera because they needed to take pictures of the truck and of the RMP. Because the truck had already left the scene, Germosen called the driver, whose telephone number he had, and made arrangements to meet him at the Throgs Neck Bridge. He stated that they were unable to get a camera at the 42 Precinct but they went to the Throgs Neck Bridge and borrowed a camera from one of the bridge officers there. He stated that the truck driver was waiting for him when they arrived at the bridge. He further stated that he was at the Throgs Neck Bridge for approximately 10 minutes taking pictures and then he went back to the station house to finish the paperwork. Germosen added: "...we needed to make some notification with regards to the vehicle being in an accident."

When they arrived back at the station house, Germosen stated that they were sitting in the 124 room, which is also known as the complaint room. He stated that Grullon was sitting in front of him and they were finishing the paperwork. When asked

what the sergeant was doing, Germosen stated: "He was writing some of the notifications that he needs to make or make his phone calls. I don't know exactly."

At one point, Germosen saw the Respondent come out of his office wearing his uniform and approach the area where he was at. When the Respondent was approximately 10 feet from him, he asked Germosen, "What are you doing?" Germosen took this to mean what was their purpose for being in the station house. When asked what the Respondent's tone of voice was, Germosen replied: "Bossy way." Germosen stated that he did not speak to the Respondent when he was asked that question but that Grullon spoke with him. He recalled that Grullon told the Respondent that they were filling out the paperwork, specifically stating: "We were doing paperwork with regard to what happened to the vehicle." Asked what paperwork Grullon was doing, Germosen stated: "...doing a PAR... Police accident report." He added that he did not know "verbatim" what Grullon said in regards to the PAR but he did recall that it had something to do with the PAR. He recalled that Grullon mentioned something about the mirror and "that it got knocked off by a truck." When asked if he remembered anything else about what Grullon said, Germosen replied, "I don't recall."

Germosen further testified that the Respondent told them "not to do a PAR." He added that the Respondent then told them: "Don't do an accident report, do a 61, which is a complaint report." Germosen took this to mean that the Respondent wanted them to disregard the PAR. He stated that he did not recall the Respondent asking any additional questions about the accident. When asked if the Respondent indicated who should be charged with the crime in the complaint report, Germosen replied, "In a way that was like a criminal mis., like we do to unknown person." When asked if the Respondent used the

phrase "criminal mischief" or "crim. mis.," Germosen stated, "I don't recall." When asked if the Respondent used the phrase "unknown person," Germosen replied, "I can't really say if it was made to unknown person. I can't recall that much." Germosen stated that during that exchange with the Respondent, he did not say anything to the Respondent.

When asked if he believed that it was correct for the Respondent to tell him to do the 61 or words to that effect, Germosen stated that it was not because it did not happen that way because what happened was an accident, not a crime. Germosen stated that he did not inform the Respondent of his beliefs that what he was being told to do was wrong. With regard to having a conversation with Grullon, Germosen stated: "I just looked at him in a way like -- okay. The way I looked at him, I guess, this is not right, but I didn't make it -- I didn't say much." He explained that the reason he did not say anything was because it was a captain telling him to do something, "...it's a higher rank telling you to do something." He further explained that he came from a military background and usually when dealing with a higher rank "most of the time it's a one-way street." Germosen stated that he prepared a 61 but he never reported the Respondent's conduct to the Internal Affairs Bureau (IAB).

Germosen was shown a complaint report worksheet [Department's Exhibit (DX) 1], which he admitted that he prepared. He stated that he prepared the document "because we were told to do so." He stated that the bottom of the last page bears his signature as well as his tax number. He also stated that he was issued a Schedule A Command Discipline (DX 2) for filling out that report and he acknowledged his misconduct by pleading guilty to the command discipline and accepting the penalty.

On cross-examination, Germosen stated that he was at the "missing job" at approximately 2105 hours and that he spent approximately 20 minutes at the site after arrival. Germosen was then shown a copy of his memo book for the day in question [Respondent's Exhibit (RX) B] and was directed to look at the entry indicating 2105. He acknowledged that the entry indicated that he went to [REDACTED] Avenue. He was then directed to the entry at 2110 hours, which indicated "RMP with broken mirror" and acknowledged that the entry indicated the time when he discovered the RMP with the broken mirror. He further acknowledged that the entries in his memo book indicated that it was actually less than 20 minutes after he arrived when he became aware of the broken mirror. Germosen further acknowledged that with regard to double parking, he did so because it was a difficult area to find parking, which caused him to double park the RMP. He added that he did not drive around the block but looked in the vicinity near the front of the building for parking.

Germosen stated that he was sure of what the sergeant told the Respondent back at the station house regarding the accident. He stated that he heard the Respondent tell Grullon to "do a 61" and that he heard Grullon tell the Respondent "that the RMP, the mirror was knocked off the RMP by a truck." When asked if he was sure of that or if he was just guessing, Germosen stated, "I am not guessing." Germosen was then referred to his Official Department Interview of March 29, 2007 by IAB and was asked if he recalled saying: "That's when I guess the Sarge explained what we got. RMP mirror got the mirror knocked off by the truck." When asked if he made that statement, Germosen replied, "I don't recall right now if I said that." He added that he was not disputing the

statement at this point. When further asked that, as he was sitting in the courtroom, was he sure what the Respondent was told by Grullon, he replied, "I need to refresh."¹

Germosen acknowledged that he in fact prepared a police accident report that he "started on the street" and completed the report at the station house. He testified, "When [it] comes to RMP not my call, he has to be a boss" to complete the report. He stated that he filled out the PAR numbered MV-104 and that while he filled out the accident report, he never entered the accident report to get a number but stated that someone else does that. When further questioned if he completed the accident report, he stated that he did not.

Germosen acknowledged that after he separated the truck from the RMP he left the location and arrived at the station house at approximately 2140 hours. It was then that they left the station house to go take pictures of the truck. When asked if he had the photographs that he took, he replied, "No." When asked where the photographs were, he replied, "I don't know." When asked where the PAR was, he replied, "No idea" and added, "I gave it to the Sarge." Germosen further explained that the Respondent never said anything directly to him but that "he was talking to us." When further asked if the Respondent directed him to do anything, he replied, "No." Germosen also acknowledged that with regard to the narrative on the complaint report worksheet that he filled out, where he made a written statement regarding the RMP, the Respondent did not tell him to use the word "unknown." (DX 1)

Germosen testified that after the truck was removed from the spot, he did not recall making a call for a camera. It was at 2140 hours, back at the station house, that he

¹ It was then pointed out by the Court that Grullon will be testifying and that anything he said to the Respondent will be testified to by him and we would not have to rely on hearsay statements.

called Brett Tucker, the truck driver. He stated that he did not know how long he was at the station house before he left to take the photographs, but guessed that it was approximately 10 minutes. He stated that he actually did take pictures of the RMP using a Polaroid camera, but he did not have the photographs and acknowledged that he never saw them again after he took them. He stated that he had no idea at what time he took the photographs of the vehicle.

Germosen testified that as a result of this case, he received a Command Discipline and forfeited one vacation day as a penalty. He further stated that when he went back to the station house, he went to look for a camera inside of the desk and also asked the desk sergeant if he saw a camera. He did not know who the desk sergeant was at that time nor did he recall what the desk sergeant said to him after he asked him for the camera. He further stated that he went with Grullon to the Throgs Neck Bridge to meet with the truck driver. When asked if he ever called the truck driver and told him to forget about meeting because it was going to be too much paperwork, Germosen replied, "I made a second call but I don't recall saying that. I really don't recall exact words. I really can't recall what I said to him. It was in regards to just like, I guess, going to leave it like that, something close to that. I don't recall exactly the words now." He stated that it was Grullon who determined that pictures needed to be taken. He did not "recall at what point exactly it was because I didn't know they needed to be taken, we needed to take pictures."

When questioned by the Court about where he got the words that he used in the details section of the complaint report worksheet, Germosen replied: that the Respondent did not tell him "...to state it specific like that...It was the order that that's what it

meant.” When asked by the Court if the words came from him, from his own thoughts he replied: “The way that it was given, it was a meaning to me to make me known.” He then acknowledged that the words on the report are the words that he wrote and reiterated that the Respondent never said anything “directly to me...” He added that he was right next to Grullon when that happened. When further asked by the Court if the words he used on the complaint report were what he gathered the Respondent meant, he replied, “Yes.”

On re-direct examination, Germosen acknowledged that the Respondent was speaking “towards us” when he gave his directive. He added: “I felt it was for both.” When asked if the Respondent used the phrase “criminal mischief” or “crim. mis.” or phrases like that, Germosen replied, “I don’t recall.” Germosen further acknowledged that the Respondent did use the word “unknown” or words like that.

At this point, Germosen’s prior Official Department Interview was received into evidence as RX C, which consisted of pages 9 and 10 of that interview. During that interview, Germosen was asked:

SGT. GREEN:	Ok. Did he tell you what kind of 61 to prepare?
P.O. GERMOSEN:	He just said do a 61—I don’t recall exactly verbatim.
DET. PATEL:	Who told you to write this story? Are these your own words, time place and occurrence.
P.O. GERMOSEN:	I don’t recall exactly who but just by the orders it was just to write it unknown.
DET. PATEL:	So the Captain (the Respondent) stated to write “unknown perpetrator?”
P.O. GERMOSEN:	I don’t recall that but like the 61, like basically.
DET. PATEL:	So this story is your own words?
P.O. GERMOSEN:	Yes.
SGT. GREEN:	Alright. For what crime did you believe he wanted you to write the 61?

P.O. GERMOSEN: For criminal mis.
DET. PATEL: And the Captain stated he wanted a 61 for criminal mis.
P.O. GERMOSEN: Yes.
DET. PATEL: When a captain or anybody of ranking order tells you to do something unlawful do you understand that you are to notify Internal Affairs?
P.O. GERMOSEN: I guess yes...The way I felt at that point is it was a lose-lose situation to disobey a direct order from a captain. It was a stupid decision. (RX C)

Sergeant Isaias Grullon

Grullon is a 10-½-year member of the Department currently assigned to the 42 Precinct. His duties as a sergeant consist mostly of being a desk officer or a patrol supervisor. He stated that on November 10, 2006 he was working a tour of 1450 by 2347 hours and Germosen was his driver that evening. He acknowledged that at one point an RMP that had been assigned to him for the day had its side view driver's mirror knocked off by a passing truck. He also acknowledged that he was back at the 42 Precinct with Germosen preparing paperwork in connection with the RMP accident. He stated that he was back at the precinct at approximately 2100 hours and was there "trying to complete the police accident report and the second form that has to be prepared with an accident report when it involves a police accident." Grullon stated that Germosen was preparing the first report, the PAR and he was preparing to do the second report and was looking for the paperwork. When he was asked whether Germosen began preparing the paperwork at the precinct or began preparing the report out on the street, Grullon replied: "He took the driver information on a piece of paper and later on he was going to pass it onto the police accident report, as far as I remember."

Grullon testified that when he was at the 42 Precinct, he was by the 124 room, also known as the complaint room. He stated that the room is on the first floor and when facing the desk, it would be on the right-hand side of the desk. He described the 124 room as: "This complaint room is no structure... You can see outside. It's just called 124 room but it's not really a room." He stated that there are desks there and he was sitting and, as far as he could recall, Germosen was also sitting. At one point, he observed the Respondent and "He was opposite to myself in front of -- as far as I remember, he was coming out of the juvenile room right across from the complaint room." Grullon believed that the Respondent was in uniform and that the Respondent spoke to him. He stated that the Respondent was approximately 12 feet away from where he was and that "his first question, was 'what are you doing at the station house'." Grullon stated that the words the Respondent used were exactly what he just said or "What are you doing here?" He asked that question only once and his tone was normal "but loud and clear..." Grullon testified that he "basically explained to [the Respondent] the scenario in a short statement, that we had had, while on a job, a truck came and actually hit our driver side mirror, it was broken."

When Grullon was asked whether or not he actually included that he was out on a job, Grullon replied, "In sum and substance, yes." When asked if he actually said to the Respondent that "a truck came by and knocked off your driver side mirror," Grullon replied, "In sum and substance, yes I did." When asked if he indicated anything else to the Respondent in response to his question, Grullon replied, "No, I don't think it got any further than that." Grullon added that "after mentioning what happened in response to his question, we stated that we were doing the paperwork with regard to the accident."

When asked if he actually said "paperwork, police accident report, PAR or something else," Grullon replied, "I don't recall."

Grullon stated that during the time that they spoke to each other, he was sitting across from the desk and was facing the Respondent. Grullon also could not recall if the accident report was on the desk at the time that the Respondent spoke with him and explained that "I've got to mention too in between this, I was busy with a missing, with a special category missing, a child that I was looking for so I was focused on that and listening to the radio, so I can't recall."

Grullon was asked what if anything did the Respondent say back to him or to Germosen after telling him about the truck he replied, "I don't remember the exact words. It was to the effect that the precinct had had too many accidents already. He didn't want to respond to that in Comp Stat and subsequently he wanted us to disregard the PAR and do a 61 for criminal mischief." When further asked if he recalled if the Respondent said either the precinct had too many accidents or a lot of accidents or words to that effect, Grullon replied, "Words to that effect. I can't remember exactly what he said precisely." When asked if the Respondent was referring to RMP accidents or just vehicular accidents generally in the 42 Precinct, Grullon replied, that he did not know if he was specific to either one. When further asked if the Respondent referred to Traffic Stat or Comp Stat or some other stat, Grullon replied, "Could have been either, that he didn't want to, either Comp Stat -- I can't remember the exact words, but basically leading towards that." He was then asked if the Respondent had said to do a 61 for crim. mis. or did he say a 61 complaint report or some other words to that effect, Grullon replied, "As far as I remember, it was a 61." He added, "I clearly remembered criminal mis." When further

asked if the Respondent said who should be indicated as the perpetrator in the 61, Grullon replied, "I don't recall all those details."

Grullon further testified that the Respondent, throughout this conversation, was addressing him and did not remember him addressing Germosen "at any given time." He stated that the Respondent's voice was "loud and clear and direct" and he did not respond because he "was shocked" and "because I could not comprehend. This is simple procedure you get into an accident; you do an accident report, that's it." He stated that he believed that the Respondent's direction to him was improper because it "was against procedure" and "basically lying." He acknowledged that in a complaint report, a crime is being alleged and that no crime took place on the evening in question. Grullon added that he did not talk to the Respondent and inform him about what his beliefs were regarding the Respondent's directions toward him. Grullon's position was he does not go against his supervisor. When asked if he had a conversation with Germosen about the Respondent's directions, he stated, "As far as I remember, just basically made the comment that I couldn't believe what I was hearing. We had a conversation about it."

Grullon testified that it took him several minutes to decide what to do and then, at one point, he asked Germosen to do the 61 report as per the Respondent's orders. Grullon stated that he did not report to anyone, including any superiors or IAB, regarding the improper direction he said he received from the Respondent.

Grullon was shown DX 1, the complaint report, and acknowledged that his signature appeared on the last page of the document. He stated that "by signing it, I was indicating that this report was correct." He was referred to the first page where the allegations of criminal mischief were described and when asked if that actually happened,

his response was "No." He acknowledged that notwithstanding the fact that what was written on the report did not actually happen, he signed the document anyway.

Grullon was then shown a ("49"), which is an intra-Department memorandum, dated November 10, 2006 (DX 3). Grullon admitted that he prepared this document and explained that "in order for this vehicle to be fixed, Fleet Services needed some sort of documentation aside from the 61 to repair the vehicle."

[The document is from "Sergeant Grullon, 42 Precinct" to the "Commanding Officer, Fleet Services Division" and the subject of the document is "CRIMINAL MISCHIEF TO DEPARTMENT VEHICLE." The document states that "on Thursday, November 10, 2006, 42 Pct. Patrol Supervisor, Sergeant Grullon Tax #921401 and Vehicle Operator, P.O. Germosen Tax #931490, responded to a 10-10 missing at [REDACTED] Avenue, Bronx, NY. MOS parked RMP #2535 in front of aforementioned location. Upon return MOS found vehicle's driver side mirror broken. Canvass for witnesses revealed negative results. Information as to how mirror was broken is unknown. Complaint report prepared for criminal mischief."]

When asked about details included in the 49 which also indicated that a canvass for witnesses revealed negative results, Grullon said that that was not true. When asked why he put that information in the memorandum, he stated: "I couldn't write a single statement saying the vehicle was vandalized and nothing else, so I had to supplement the canvass and that's about it." He stated that he prepared the document after his tour was done.

Grullon was then shown a Command Discipline (DX 4) and asked if he was issued that in connection with the events of this case and he acknowledged that it was. He further stated that when the Respondent had a conversation with him at the station house, he acknowledged that the Respondent did not ask any additional questions about the vehicular accident nor did he ask him if he identified the person who actually knocked the mirror off the car or where the car was parked at that time.

On cross-examination, Grullon stated that he forfeited three vacation days as a penalty in this case. He stated that the police accident report was started by Germosen but it was never finished. He further stated, "As far as I remember it was in my hand at one point or another," referring to the accident report. He also stated that the photographs were "probably...in my hands at one point or another..." When asked if he now had the police accident report or the photographs, he replied, "No, I don't." He further stated that he did not have any idea where they were. When asked by the Court what he did with the accident report and photographs when he had them in his hands, he replied, "That part I don't recall." He added, "As far as I remember, gave back to Germosen with the police report -- the accident report, excuse me." He then qualified his answer by saying that he did not keep them and if he did, he did not remember where he put them.

Grullon testified that when he discovered the RMP, he never went over the air and reported that the RMP was in an accident. He stated that when he reported back to the 42 Precinct station house, he notified the desk officer of the accident but he did not recall who the desk officer was. He just remembered that it was a sergeant. Nor did he go over

the radio and request a camera at the scene of the accident. Grullon acknowledged that double parking an RMP creates a safety hazard insofar as the Patrol Guide is concerned.

Grullon acknowledged that in the event of a Department vehicle accident not involving physical injury or death, the patrol supervisor is responsible for conducting an investigation into the accident. He acknowledged that it was fair to say that it was the patrol supervisor's job to interview all persons involved in the accident and the witnesses to the accident. He also acknowledged that he did not make any entries in his memo book with regard to questioning witnesses to the accident. He further acknowledged that it is also the responsibility of the patrol supervisor to prepare Part A of the accident report for the Police Department and that he did not do that aspect of the investigation.

Grullon stated that the investigation into the missing person concluded at approximately 2200 hours. This testimony differed from his earlier testimony where he testified that it concluded at 2100 hours and he explained that when he went back to the station house he was still handling the job for the missing person over the radio. Grullon was then directed to review his memo book for that day (RX D). He acknowledged that he responded to [REDACTED] Avenue at 1945 hours, as per his entry in his memo book and stated that the 2200 hour notation when the missing person was found was an approximate time. He acknowledged that his conversation with the Respondent took place prior to 2200 hours. When asked how he remembered the time, he said that aside from it being in his memo book, he just remembered that that was the approximate time.

When Grullon was reminded that during his Official Department Interview he told investigators that it was at 2200 hours that he came out of the Vyse Avenue location and observed the broken mirror, Grullon stated that if that was what he said then that was

probably incorrect. He explained that "as we were walking out the building, we observed a large truck ripping off, breaking the RMP side view mirror on the driver's side." After calculating the time he responded to Vyse Avenue, which was at 1945 hours, and the approximate amount of time that he stayed there, Grullon acknowledged that he observed the accident occur at 2030 hours.

A portion of Grullon's Official Department Interview was then read into the record as follows:

DET. PATEL: Did you respond to a missing at 1945 hours at [REDACTED] Avenue?

SGT. GRULLON: That is correct.

DET. PATEL: What time did you complete the job?

SGT. GRULLON: Approximately 2200 hours.

DET. PATEL: When you came back outside what, if anything, did you observe?

SGT. GRULLON: The driver side mirror of the RMP was broken.

DET. PATEL: Did you observe how it was broken?

SGT. GRULLON: We were actually present when the mirror was broken by a truck was trying to squeeze by.

Grullon explained the difference in time, in which he said that the job was finished at 2200 hours, by saying that "the question that [Detective] Patel asked was misleading. When he asked if I responded to a missing to that location, the answer was, 'Yes.' When he asked me what time the job was completed, I answered '2200.' The reason why, it's a basically a not fair answer -- excuse me, question -- because he at least referring to the missing itself, not the actual accident."

Grullon acknowledged that he never asked the investigator to clarify what he meant by his question. But during trial he acknowledged that the investigator's questions were misleading and caused the answers he gave.

Grullon acknowledged that as per his memo book, it was at 2330 hours that he was at the station house doing administrative work with regard to the accident. When asked if the 2330 hours was originally 2230 hours and if he made a correction in his memo book, Grullon replied, "I can't recall, sir. This is too long ago." He stated that maybe it was, in fact, 2330 hours.

Grullon further acknowledged that he testified earlier that he had a conversation with the Respondent before 2200 hours in which the Respondent asked him "what have you got" and "what is going on". He further acknowledged that at that point he gave the Respondent a description of the accident and that he talked specifically about the truck hitting the RMP. When it was pointed out that he never used the word "truck" during his official interview he replied "...it's possible."

Once again, Grullon was referred to his Official Department Interview where he was asked by Detective Patel why he prepared a UF-61 stating criminal mischief and he replied, "When we walked into the precinct completed the job, the missing. We walked into the precinct to start the report, to prepare the PAR and the accident report involved. We were--encountered Captain Melendez and he asked us what we were doing at the station house and we explained to him what we had and he told us not to do a PAR."

[This passage was stipulated to by the Assistant Department Advocate ("Advocate") as being, in fact, what the transcript of the interview stated. The Advocate also argued that essentially the interview does not go into any other details and Grullon was never asked specifically if he told the Respondent anything about the truck. Because Grullon was not asked specific questions regarding the truck, the Advocate argued that he did not intentionally leave the word "truck" out of his answer.]

When asked if he had directed Germosen to start an accident report at the scene, Grullon stated, "I remember directing him to take the driver's information so we can fill out an accident report." He added that the purpose of taking the information was to do the accident report. To the best of his recollection, they did not have an accident report form in the car and that is why he told Germosen to take the information so they could fill out the report at the station house. When further asked if to his knowledge they had prepared an accident report on the street, Grullon replied, "If he did, I don't remember him doing it, sir."

Grullon stated that he and Germosen went to the Throgs Neck Bridge to take photographs of the truck. When asked by the Court if he went back to the station house to get the camera after observing the accident, Grullon replied, "No, sir. We were probably halfway or a few blocks from the scene where the accident happened when I remembered that we didn't take pictures of the truck. So I remember asking Officer Germosen to contact the truck driver so he can stop at whatever location he was at and that we will take pictures of the truck." He was further asked by the Court if he never went back to the station house to look for the camera and Grullon replied, "Actually we did at one point. We got to the station house, got the camera and got the pictures -- no, sorry. That's confusing. We got to the station house to get the camera. Give me one second. I can't recall how we got the camera. Give me a second, judge. I can't remember how we got the camera either, whether we went to the station house and got it or we obtained one from the Bridge Police Department." When asked by the Court if he ended up on the bridge before he spoke to the Respondent, he replied, "That is correct."

When we headed back to the station house, again, that's when I talked with the Captain [Respondent]."

Grullon acknowledged that it was possible that he did not mention Comp Stat to IAB with regard to what the Respondent said to him. He also said that he did not mention to IAB that the Respondent told him that the 42 Precinct had too many accidents. He also acknowledged that as a patrol supervisor there is less work involved in preparing a 61 for criminal mischief than in preparing a PAR. He recalled that after he finished his overtime for making out the 61 report for "Criminal Mischief Department Auto," he mentioned that it was as ordered by the Respondent.

Grullon acknowledged that when he went back to the 42 Precinct, he was there for two different reasons: the missing person and the broken RMP. He also acknowledged that he never made any Patrol Log entries or Command Log entries when he was back at the precinct station house.

The Respondent's Case

The Respondent called Detective Anjay Patel, Chief Michael John Thomas Scagnelli and Deputy Inspector Timothy Bugge. The Respondent also testified in his own behalf.

Detective Anjay Patel

Patel testified that he has been a detective for approximately four years. He stated that he was assigned to investigate this case and the allegation that he was investigating was falsifying Department records. He stated that the allegation was based on an

anonymous letter that IAB received. He acknowledged that falsifying Department records is serious misconduct.

Patel stated that IAB received the anonymous letter that started this investigation on January 11, 2007. He acknowledged that early in his investigation, Germosen and Grullon, along with the Respondent, were all subjects of his investigation. He stated that he conferenced this case with Assistant District Attorney Caliendo, from the Bronx District Attorney's Office on March 26, 2007, to determine whether Grullon and Germosen would be charged criminally. He acknowledged that Caliendo declined to prosecute criminally because, in his opinion, they were ordered to make out this report by the Respondent.

Patel testified that during his investigation, the term "CompStat" was not used by anyone involved in this case. He stated that while this case began as falsifying Department records, it was after the official interviews of Grullon and Germosen that the case against the Respondent became a failure to investigate. He stated, however, that "the only thing that is documented is the DRV, falsifying Department records, because that allegation still stood." He further stated that nowhere in his case folder does it document the fact that the Respondent was being investigated for an improper investigation.

On cross-examination, Patel acknowledged that he contacted Police Officer Clark from the Chief of Patrol's office regarding the 42 Precinct's TrafficStat numbers for the months of October, November and December 2006. He stated that according to Clark, the 42 Precinct did have a high number of vehicle accidents and they did have to explain this at TrafficStat. Patel further acknowledged that his investigative worksheet #42 also

involves TrafficStats in the borough of the Bronx. That worksheet also indicated that the 42 Precinct was up in accidents in two different categories. Patel stated that when he interviewed Grullon, he was told that the Respondent said something about TrafficStat at the time that he spoke to Grullon and that was one of the reasons why he was interested in the 42 Precinct TrafficStat numbers.

Patel testified that his conferral with Caliendo regarding possible criminal allegations is a procedure that is done by IAB whenever they conduct an investigation into possible criminal allegations. Patel further acknowledged that when he conferred with the District Attorney's Office, he had not yet interviewed Grullon, Germosen, or the Respondent at that point.

On re-direct examination, Patel stated that when he discussed the case with the District Attorney's office, he discussed every aspect of the case, including the accident that took place. Patel further noted that he did not know what impact would accidents occurring to parked RMPs have on TrafficStat.

Chief Michael John Thomas Scagnelli

Scagnelli testified that he is the Chief of Transportation. He stated that the concept of TrafficStat meetings, which occur once a week, 52 weeks a year, is an accountability process: "what we attempt to do there is focus to move traffic and reduce accidents, injuries and deaths." Scagnelli stated that he selects a particular borough out of eight Patrol Boroughs for a particular week. He asks more than 95% of the questions at those meetings. He added that those who are doing poorly are called on more frequently than those that are doing well. Generally, there are approximately four

precincts that are selected per TrafficStat meeting. According to Scagnelli, at the TrafficStat meetings, he “[would] ask the executive officer or commander to explain the increase or sometimes [he] call[s] up the best people and say[s], ‘Explain why you did so well. Teach us.’” Those chosen will then go through what they want to tell about why their numbers are generally bad, either because they did not give enough summonses out or accidents are “through the roof.”

Scagnelli testified that in analyzing who is at fault for a particular accident, he asks, “Did the member of the Department driver cause the accident? If he or she caused the accident, then we are at fault...If we didn’t cause the accident, we are not at fault.”

When Scagnelli was asked what role, if any, do double-parked RMPs that are damaged without injury to anyone play in TrafficStat, he replied, “None. While I am talking about RMP accidents, well, we have two cars not at fault, one was stopped at a red light and was rear ended and we gave that motorist a ticket, and I would say, ‘Ok, I agree with that.’ Another one was a double-parked RMP unoccupied, you know, the officers were inside doing XYZ. I would say they weren’t in the car. They are not at fault. I would move on. Only in the last two weeks has the First Deputy Commissioner asked me to inquire why they were double parked. So until two weeks ago, it meant nothing to me.” When asked to explain the difference between CompStat and TrafficStat, in terms of accountability of executive-level members of the service in the rank of captain and above, Scagnelli replied, “CompStat’s mission is to get the crime down. The seven index crimes. My mission of TrafficStat is, as I said, move traffic and reduce the number of accidents and injuries and deaths.” He added that at TrafficStat meetings, it was seldom confrontational and only was confrontational if the captain or

above who was at the microphone was a wise guy. When asked what was worse for a captain, having to answer to a TrafficStat or having to answer for a crime at CompStat, Scagnelli replied, "CompStat. They're interested in a reduction of crime."

Scagnelli was then shown RX J and stated that this document was an in-house Patrol Borough Bronx TrafficStat document prepared after a TrafficStat meeting. He stated that this document, according to his belief, was prepared by the New York City Police Department or personnel of the New York City Police Department.²

It was pointed out to Scagnelli that at one point in the document it states that he admonished the X.O. for poor accidents. Scagnelli stated that he would never use the term "poor accidents" and that it was someone else's choice of words. He explained that he "would talk about increases in accidents. I don't know what a poor accident is. I would talk about increases of accidents and in this particular case we are talking about 49 accidents that were up 7.7%, which for a 30-day period is not the end of the world. But the injury accidents were up 43% and injuries were up 80%, I would never admonish someone for that." He added, "I might say, 'you have to get a handle on it,'" but if they were up there without an attitude he would not admonish them. He further explained, "I wouldn't admonish someone simply because the numbers were up. If the numbers were up because they did a bad job or for other reasons, I might say, 'This is terrible.' That's the extent of it. There is no yelling or screaming or nobody walks up to the podium upset with me." His main concern is that he wants the members to understand that they could have done a better job and to have them walk away being angry with themselves for not doing a good job and not being angry at Scagnelli because he embarrassed them at the podium.

² RX J related to the period of time in close proximity to this case.

On cross-examination, Scagnelli stated that at times there were captains at TrafficStat meetings who were unprepared and he referred to this as “problematic.” He acknowledged that for those members, he would point out their lack of preparedness. He added that he is not looking to embarrass the members but they might be embarrassing themselves. When asked if he was interested in RMP accidents in which the RMP operator is at fault or not at fault, he replied, “When they are not at fault, while I wish it didn’t happen, we can’t control that, so it’s not a concern of mine. Only when we are at fault, when we cause an accident from driving carelessly.”

Deputy Inspector Timothy Bugge

Bugge is a 21-year member of the Department and is currently the commanding officer (C.O.) of the 42 Precinct. He assumed command on November 2 or 3 of 2006. He stated that he originally met the Respondent when the Respondent was a lieutenant at the 72 Precinct in Brooklyn and Bugge was a captain in Brooklyn North. When the Respondent was assigned as his executive officer (X.O.), he told him that “I want him to be on top of things. He is there when I am not there. We work opposite hours. The goal was, I wanted to be able to sleep well at home when he was there. I said, ‘I want you to be in charge of the cops and the bosses.’ I wanted him not to be their boss, but a leader when I am not there and when I am there, to get everyone straight and in order and monitor them at all times.” When asked with regard to his accountability with CompStat or TrafficStat, Bugge stated that CompStat was his focus because “it is our benchmark. That’s what they are judging me on. That is what is in the media. The crime stats. That’s what they judge the city on.” He added that he would rather answer for an accident than for a crime. He stated that he was being monitored on crimes and that he

would rather have a car accident, where he was not being monitored as much as he was in the area of crimes.

When Bugge was asked what his understanding of the case against the Respondent was, he said that the allegation was that he told him (Grullon) to get rid of an accident report and do a complaint report. When asked if he had ever given that kind of mandate to his X.O., Bugge replied, "I haven't." When asked if the allegations against the Respondent comport with any objectives that Bugge has, he said, "No, none."

When Bugge was asked what his opinion of the Respondent's integrity was, he stated, "It is someone I like having...I knew he was a strong supervisor. He wasn't a friend of the cops. He was a leader. That's what I wanted. I don't want a boss. I want a leader. I found out he was a leader." He further stated that the Respondent "is a thorough guy. He is not a shortcut guy."

On cross-examination, Bugge stated that he first met the Respondent in either 2003 or 2004 when the Respondent was a lieutenant. He stated that he and the Respondent, as his X.O., worked together every day. He stated that as his X.O., he considered the Respondent a partner of his and that they talked every day. He stated that if they did not talk in person then they spoke on the phone. Their tours overlapped only by a couple of hours; otherwise, one worked days and the other one worked nights. When asked if he reviewed everything that the Respondent did, Bugge replied, "I review every piece of paper that comes to the 42." Bugge also stated that when the Respondent would prepare for TrafficStat, "we would bounce questions. Same with CompStat. Instead of preparing for CompStat, we go back and forth. One of my goals as a

commanding officer, I would mentor him. I did it as an executive officer or as a commanding officer. I felt it was my job to get ready.”

The Respondent

The Respondent is an 18-year member of the service currently assigned to the 44 Precinct. In July 2006, he was assigned as the Executive Officer (X.O.) in the 42 Precinct. He testified that his management style is that of “a hard-charging leadership type of style.” He believes that supervisors should be held accountable and responsible for their duties. On November 10, 2006, he had already been the X.O. at the 42 Precinct for approximately three and a half months and his tour of duty at that time was 2300 by 0700 hours.

The Respondent testified that he signed in on November 10, 2006 at 2300 hours, as evidenced by his signature on that day’s Command Log (RX E). He recalled having a conversation with Grullon at 2300 hours on that date while he was behind the front desk signing in and Grullon was in the 124 room. He described the 124 room as “a couple of desks, a couple of computers adjoining the desks” and as you step down one step the computers are located in an area that is designated the 124 room. It is not a closed-off area but just an area designated as the 124 room where “the Desk always has a view of the civilians and officers inputting 61s or whatever other things they are doing there.” He stated, “I remember that Sergeant Grullon was right there as I was signing in and I looked at him. I can recall that he was in full battle regalia. He had his jacket on, he had his gunbelt on and I automatically assumed, what is he doing here as patrol supervisor. So I asked him, ‘Grullon, what are you doing, what you got?’ Those are my typical questions I ask any supervisor as I walk into my station house.” He further stated that he recalled

Grullon saying that "there is a mirror missing from one of the RMPs outside. He had a mirror missing from one of the RMPs outside. My response to that statement was, 'Ok, make sure that you do a 61 and a 49.'" He stated that after that conversation with Grullon, he did not recall engaging him in "a long verbose conversation." When asked by the Court to again repeat what he recalled Grullon saying, the Respondent replied, "There was a mirror missing from one of the RMPs. I believe it was either RMP or one of the cars outside. So in my mind, outside of the station house a mirror was missing from one of the cars."

The Respondent stated that after he instructed Grullon what to do with the RMP, he then went to change his clothes where his locker is located. He added that the conversation between him and Grullon took "a few seconds..." When asked if he had any knowledge as to whether missing mirrors on RMPs are something that happens within the Patrol Borough Bronx, the Respondent replied, "Missing mirrors, whether it be a Department auto or whether it be a civilian auto in the street, is a very common occurrence, not in the Bronx only, everywhere that I have patrolled, that I have been at." He stated that the term or classification used for missing mirrors is "criminal mischief to auto." He added that the terms "criminal mischief" and "vandalism" are different. He explained, "Criminal mischief is the charge we charge for vandalism. We don't charge vandalism. We charge criminal mischief."

The Respondent examined RX F and stated that the six-page document is a series of repair codes for vehicles. He stated that page one contains descriptions of the codes for repairs of Department vehicles. He stated that he acquired the document from Fleet 7, which is the Patrol Borough Bronx repair location for all vehicles and Department autos.

He stated that one of the documents in the packet that relates to this case is Page No. 2, in that "it tells you what happened to that vehicle." He stated that Page No. 2 indicated that three Department vehicles in the Bronx were repaired for vandalism for the month of November 2007. The Respondent stated that the next page, Page No. 3, referred to the RMP in this case, Vehicle No. 2535. He noted that that page indicated that "445 repair count is the total number of Department autos, RMPs, that had been fixed for vandalism in the city of New York for the Patrol Borough, all Patrol Boroughs." He added that in the next to last page of the packet, it indicates that the cost of repairing Vehicle No. 2535 was in the amount of \$221.21 (RX F).

The Respondent stated that he never mentioned the word "TrafficStat" to Grullon and Grullon never mentioned to him that the RMP driven by Grullon and Germosen had, in effect been involved in a motor vehicle accident with a truck or anything else. The Respondent also never used the word "TrafficStat" with Germosen. He stated that he only recalled speaking to Grullon that day and added, "I don't recall ever seeing Officer Germosen. If he had been there, I did not acknowledge him, I did not see him."

The Respondent stated that TrafficStat is something that he has been dealing with since he has been a lieutenant and now falls on his shoulders, as the X.O., to deal with TrafficStat. He explained that an appearance at TrafficStat is pretty much up to Chief Scagnelli. Scagnelli is the one who decides who is coming to TrafficStat at any given time. The Respondent said that with regards to this case, he went on a week-long vacation right after November 10, 2006.

The Respondent reviewed RX G, his "night differential", for the month of November 2006. He stated that the document indicates when he signed into the

Command Log on any given day during that time period and the scheduled time that he was required to work. He stated that it was his signature on the document. He further stated that on November 10, 2006, his tour of duty was 2300 by 0700 hours, which meant that he signed in at 2300 hours on November 10, 2006 and worked until 0700 on November 11, 2006. He then went on vacation on from November 12 to November 18, 2006 and his next scheduled work day was November 20, 2006. He stated that during the time period he was gone he did not know if there was a TrafficStat meeting during that time.

The Respondent acknowledged that on April 13, 2007, he was officially interviewed by the Department. He stated, "I remember that I said that I was aware of speaking to Sergeant Grullon and I was aware of an accident but as I further went into the testimony, I realized that it wasn't that there was an accident but there had been an incident with a vehicle. So being that I was there for the first time listening to this accident accusation...it dawned on me that as I am going through the testimony that I was the subject, that it was towards me rather than the scope of what happened to Germosen or Grullon, because again, I had no idea who the subjects were other than me. So when I was told it was Sergeant Grullon and Officer Germosen, the testimony starts off with accident, I inadvertently brought it out as accident. But as the testimony progressed, it was an incident that I was told by Sergeant Grullon, not an accident. That's why I answered the way that I did to Inspector Thompson in the beginning of that G.O."³

The Respondent testified that as a captain to the New York City Police Department he never inspected a Police Department vehicle that had been involved in a property-damage-only accident because "that's not one of our duties." He added that "it

³ An Official Department Interview is also referred to as a "G.O. 15."

was my duties as a sergeant or as a lieutenant in the field, to investigate property damage to a regular patrol car, to a marked car or to an unmarked car.”

When asked to describe his relationship with Grullon, the Respondent stated, “In my three and a half months in the command, it was very limited exposure. He, Sergeant Grullon did, if I’m not mistaken, he worked the second platoon. As I mentioned before, I worked the night tours, the later tours, so it was very limited exposure with the sergeant. I would come in at my desk, I would sign in. ...Insofar as speaking to Sergeant Grullon, having a relationship with him, I had no relationship with him. He was just another sergeant in the 42 Precinct.”

The Respondent recalled his conversation with Grullon and recalled his thinking and his procedure for giving directions to his subordinates. He stated, “When somebody tells me something, I normally come back with a reinforcement instruction. In this case I told Sergeant Grullon, reinforce the instruction, ‘make sure that 61 and 49 was done.’ That was the extent of my conversation with Sergeant Grullon. We didn’t get into -- he never came back to me and said, ‘Hold on, boss,’ which I normally hear a lot in my capacity. ‘Hey, boss, it didn’t happen this. This is what is going on, this is what I am doing.’ Not a problem. If that were the case, then I would give more positive reinforcement because I studied for three promotional exams. I pretty much know what the Patrol Guide says and if I don’t know, I go back to the Patrol Guide to look at it, to get more reinforcement...Sergeant Grullon never, never came back to me and said, ‘Hey, boss wait a minute, that car was involved in a car accident.’ He did not utter a word to me. He just looked at me and went about his business and I went about my business. That was the extent of my conversation with the sergeant.”

The Respondent stated that he has made a presentation before Chief Scagnelli at TrafficStat and "I never had any negative experience, insofar as TrafficStat is concerned. I have plenty, but not in TrafficStat." He stated that he has attended "close to 8 to 12" TrafficStat meetings in the almost three years in his capacity as X.O. in the Bronx. When asked if he knew whether or not captains got "chewed out" for RMP accidents involving damage only, the Respondent replied, "Not property damage...During TrafficStat as a lieutenant and now as a captain, what I can recall as far as patrol cars are concerned, we care about officer safety. We want to make sure that when we do the accident review boards, did the officers use good judgment. That's our concern, you know. Good judgment would be, were they wearing their seatbelts, were the turn lights on going through the intersection...What we look at is if the officer is at fault, what can we do to rectify that. Also when we do our accident review boards, we talk about that because that is something that comes up in TrafficStat. He wants to know, did we find the officer at fault or not at fault. If we found him at fault, we learn from that. Well, how did he find him at fault." He further explained that when he is out on the street and responding to a location he gets "incredibly angry when [he] see[s] the vehicles double-parked and clogging up the traffic on the street for no other reason than officers are being lazy and this is where they want to put their vehicles." He added that at the 42 Precinct he was well-known to give positive reinforcement to supervisors either on the street or on the desk or in the precinct. He stated that an example of positive reinforcement "would always be to the supervisor, 'get that vehicle off the street before it's hit by another vehicle;' or 'get that vehicle off the street so that other emergency vehicles can get through the street.' Again, those practices are what is reinforcing Chief Scagnelli's

TrafficStats because those are the things that he looks at and my supervisors are aware of that.” He went on to say that he actually raises his voice or gets loud with his supervisors and gave the example of: “Sergeant, get that vehicle off the street before it gets hit by another vehicle. We can’t get our emergency vehicles through the street.”

The Respondent reviewed RX H and stated, “These are the pictures that were taken of RMP 2535 that were handed to me by Mr. Paul Frost at Fleet Services that was attached to the 49 and the work order for fixing the mirror of the vehicle.” He noted that there were a total of four photographs and the mirror looked like it was “sheared off.” He stated that at TrafficStat meetings, he would present this type of damage to a vehicle in the following manner: “If I had three RMP accidents, he (Chief Scagnelli) is going to say, ‘Tell me about your RMP accidents, Captain Melendez,’ and I will say, ‘The first one was parked, Chief, mirror.’ It’s parked. I can’t find anybody at fault. If the vehicle’s parked, it’s parked. But I say, ‘By the way, Chief, this one was parked by the supervisor because he failed to put it in the proper spot.’ Then, he wants to know, why did I find a cop at fault. Rarely do we get those. What we do get, the vehicle was parked outside, it had damage to it, unknown how it happened and I can’t find anyone at fault because a lot of times a vehicle is parked just there for the day, and that is not an uncommon occurrence. The next thing is, okay, was it occupied, how did it happen. So he actually breaks down RMP accidents into certain categories.” The Respondent added that he would find a supervisor at fault if he had double-parked an RMP that incurred damage to it.

The Respondent reviewed RX I in evidence and stated, “This is what we refer to as an NYPD Internet Department Accident Report System.” He stated that the document

“indicates that for the year 2006, specifically for the 42 Precinct, this is who all these numbers are indicative of. These are all 42 Precinct automobiles whether they be RMP or whether unmarked vehicles. It indicates how many accidents occurred for that year, calendar year, January to December. It indicates a total of 34 accidents occurred.” The Respondent stated that it is part of his duties to review all the precinct’s accidents. He noted that he was assigned to the 42 Precinct in the middle of July so any accidents that occurred after the number 24 on these documents, he would have been held responsible for reviewing those accidents between 24 and 34. He stated that all the accidents are reviewed by him and require his signature and then the commanding officer’s signature.

On cross-examination, the Respondent acknowledged that Grullon said to him that there was a mirror missing on one of the RMPs, a mirror missing outside, and the Respondent told him to make sure to do a 61 and a 49. He stated this is what he told Grullon regarding the missing mirror on the RMP. The Respondent further stated that when he went to participate in his Official Department Interview on April 13, he had no idea what they were calling him in for. Subsequent to being interviewed, the Respondent was able to get the 49 (DX 3) indicating what Grullon had stated about the incident and he was also able to ascertain the overtime slip, which gave him a clearer picture of what had happened on November 10, 2006. The Respondent was then read a passage from his interview on April 13, 2007, where the following questions were asked and where he gave the following answers:

Q: Ok. I want to bring your attention to November 10, 2006 on or around 1945 hours. Sergeant Grullon and P.O. Germosen were conducting patrol within the confines of the 42nd Precinct, when they were involved in a motor vehicle accident. Were you ever informed of that accident?

A: I don't recall the accident but I do recall Sergeant Grullon speaking to me about an accident.

Q: What, if anything did he say to you?

A: The recollection of that conversation was that there was some damage to some part of the vehicle, of the RMP, when they went out to look at the RMP.

Q: Did he tell you how the vehicle was damaged?

A: No.

The Respondent acknowledged that those were the questions that were asked and the answers that he gave during that interview. He explained that it was his understanding that the interviewer "was asking about something that occurred to an RMP." He stated that he recalled the conversation between him and Grullon to the extent that damage was mentioned but that Grullon "never told [him] how the vehicle was damaged." He was then referred to his interview of April 13, 2007 where he was asked:

Q: What was your recollection of the conversation with the sergeant?

A: The conversation as far as I can recollect, because I have nothing written down, was that there was damage to the vehicle when they went to see the vehicle. I don't remember if it was a mirror or if there was some damage to the vehicle, that's not uncommon because we always have damage to the vehicles especially in front of the precinct.

The Respondent further explained, "The only thing that I remember was, that he said there was damage and I do recollect mirror but I don't recollect if there was any other part of the vehicle that was damaged. I think I made that perfectly clear in that testimony, damage to the vehicle or mirror." While he did not remember during his interview what part of the vehicle was damaged, the Respondent stated that, subsequent to that interview, he does know what part of the vehicle was damaged.

Once again, the Respondent was referred to his questioning during the Official Department Interview, where he was asked:

Q: After he said there is damage to the vehicle what did you tell him?

A: I don't recollect. If it was criminal mischief. If I said that it's crim. mis., then he took upon himself to do a 61. I didn't sit there to do the 61 with him or if presented me with a 61.

Q: So you have absolutely no recollection what direction you gave the sergeant?

A: If I had said criminal mischief, there would have been a 61 but I don't have a recollection if he did a 61.

Q: You don't actually specifically remember what you told him to do?

A: Not per se. I do recall the sergeant coming up to me in regards to an incident.

The Respondent further explained his not remembering during the time of his interview, by saying, "I do say in the testimony that I don't recollect based on the fact that was the first instance of me being told what the incident was." He further explained that, in his capacity as a captain, he does not keep a memo book where he can make notes of incidents. Nor do captains keep "copious notes" insofar as what they do out on the street. He stated that he handles hundreds of questions per day and one day "runs right into another. So on that day, I did not recollect."

Subsequent to the interview, he reviewed the 49 and the 61 and the 49 was "verbatim minus the fact that they were adding, missing in that the car was double parked, is what the sergeant told me; that a mirror was missing from the RMP. When I looked at it, I was 'gee, that's exactly what he told me.' Also when I found his overtime slip, in the back of the overtime slip, is what he said, authority of Captain Melendez, the 49 and 61. That's what I used as the basis...to figure out the date in question, what is this that I did, what is it that I must have said. The day that I was there April 13th, Inspector Thompson, all he is saying is accident, accident, accident. I do believe that the record indicates, that after I mentioned it the first time 'accident', I am now calling it an

incident, because that's exactly what the sergeant did, there on the desk, here I am, there he is and he's telling me this lie, a car has a broken mirror, when in actuality probably he was somewhere else, doing something else." The Respondent acknowledged that he reviewed those documents subsequent to being charged in this case and subsequent to this case being scheduled for trial.

The Respondent denied that he lacked memory of the incident for more than a year. He stated that after the April 13, 2007 interview, it was July of that same year where he went about "clearing of my name, I should say, to find out what is it that transpired on that fateful day, that fateful November 10th of 2006...I believe it was a little bit after the fourth of July because memorializing that facsimile which I sent to my attorney, is the actual date and also -- that I uncovered those materials, sometime May, June, July so sometime in those three months."

When the Respondent was asked what specifically was it that Grullon told him that led him to believe a crime took place, he stated, "I am walking in, I am signing in the command's Log and here is my patrol supervisor next to me in the 124 room. I remember that I was looking at him. I know it wasn't a long distance. I knew that I was looking straight at him and he mentions, what I can recall, I know that I didn't mention this in the IAB, but in my memory, I mentioned ⁴ to the front of the station house, that's what I said, in the front of the station house, that's also in my transcript, in front of the station house. That a mirror is missing from one of the RMPs in front of the station house...It's not uncommon for that to happen in front of the station house. As I mentioned before, the officers, the supervisors, they allow the vehicles to be double-parked, parked on hydrants and vehicles do become vandalized." He further explained

⁴ The transcript states "motioned" but this Court believes that it should have been typed as "mentioned."

that vehicles are parked in front of the station house and "officers do park everywhere and this has become epidemic. As I mentioned, that's what I assumed he was discussing. He didn't tell me anything other than, there is a mirror missing from an RMP -- outside; sergeant, 61, 49." He acknowledged that he, therefore, assumed that the sergeant was giving him a description of criminal activity in that a mirror was missing from one of the RMPs outside. He acknowledged that those words alone, however, do not describe a crime and "that's why [I] leave it upon the sergeant to tell me otherwise." He stated that his words to Grullon to do a 61 and 49 were not tantamount to a direction but rather, it was "positive reinforcement, make sure that it's done." He further explained that when he tells an officer to make sure this is done: "Basically I am giving guidance as to what is happening because a lot of times...when someone poses me a question, I finish it with a Patrol Guide procedure. I finish it with a direction. In this case, when he says an order, I don't consider it an order unless I say, 'This is an order, do this.' I do not say that. Make sure this is done, that way I would have given him instructions..."

The Respondent acknowledged that while he was not given any information about a crime, he gave Grullon directions to do a 49 and a 61. He further acknowledged that he did not ask Grullon how the mirror got broken. He stated, "I left that up to Sergeant Grullon." He further explained, "If I were to look at every 61 that says Criminal Mischief...I would never leave the station house..." He stated, "One of the key steps to my supervisors is the fact that they are empowered to do investigations. That's why I told the sergeant, '61 and 49', because that's exactly what the 49 is...it's his investigation as to what transpired. That is not my duty. So when I said 61 and 49, I did them as a sergeant, I did them as a lieutenant, I did 49s when things were broken but not as a

captain. I empower my supervisors to do that. Now if he did not mention anything to me, I am not a mind reader. He has to have the -- he has to be empowered to tell me what is happening." He further explained that, as he previously mentioned, "the supervisors and police officers of the 42 Precinct at that time, were not doing anything. Just listening to Sergeant Grullon telling me about a missing where he didn't notify anyone. I was cringing because of the liability that the City has because not following a procedure. I can't tell the sergeant what to do. I can't hold his hand on the street every day." He stated that his direction to Grullon fit what he told him because he acknowledged that it is a common occurrence that all precincts, including the 42, incur RMP damaged outside of the precincts. He further acknowledged that he assumed that what Grullon told him was that some parked car outside the station house got damaged. He further acknowledged that based on the testimony given at trial, what was brought out in this case was not what happened to the vehicle. He added that at the time "obviously the sergeant was lying." He further acknowledged upon questioning by the Court that he did not consider Grullon telling him a lie back on November 10, 2006, but he does consider it a lie today based on what he now knows of the incident.

The Respondent further explained why he considered Grullon's information a lie back on November 10, 2006 because:

when I give directions, they are always free to question my direction. That's why we have safety guidelines. If my direction is wrong or they are being compelled to do something wrong, they are taught, basically right from the Academy, if you are doing something unlawful, IAB is to be notified immediately. The sergeant said he didn't call IAB. He didn't feel at that moment, he said it here, he thought it was unlawful, but he didn't follow basic procedure that he thought was unlawful. Notwithstanding that he comes with a half-truth, giving me a lie, mirror is missing outside, knowing that my supervisors will indicate to me, to my desk

sergeant has to be the first person notified on a vehicle accident. There was a platoon commander working that tour, which he didn't notify that there was a vehicle accident. He just said, 'There is a mirror missing outside on an RMP.' That's a totally different story than, 'Hey boss, I got into a vehicle accident and it knocked off my mirror.' I heard that story many a times. That is totally different. That's a half-truth. Maybe he is covering something, exactly what I believe, covering something, his ineptitude to call the patrol desk, the patrol supervisor. His ineptitude to call Missing or the duty captain. The fact that he knows that if I find him at fault, he is going to get a heavy reprimand from me for not following the basic procedure to get the vehicles off the street that way they do not become a part of our statistics. Our vehicles are precious right now, especially in this economic times. We have to make sure that they are running, to make sure that they are operable so the officers have something to ride out there with. This is one of those incidents where the sergeant was afraid that if he had told me the truth with what he did...

The Respondent acknowledged that it would be an unpleasant experience to have to go to TrafficStat meetings and answer for an increase in any type of accident or traffic problems in his precinct. He added that he knew that in 2006, the 42 Precinct had very good numbers. He stated, "There was no endemic or epidemic of vehicle accidents in the 42..."

The Respondent was then given a hypothetical situation where a supervisor double-parks his vehicle and his side mirror is swiped off when the car is double parked. He was then asked if he would find him at fault for doing so, and the Respondent replied, "I would find the operator at fault to be instructed...The police officer at fault and I would verbally counsel the sergeant. He is the supervisor, he should know, or she should know, better." He added that if he were at a TrafficStat meeting with the same hypothetical situation, Chief Scagnelli would ask, "How would you find the police officer...fault or no fault, or [both]?" He acknowledged that if the police officer was deemed at fault, Chief Scagnelli would not ask follow-up questions nor would he ask

circumstances which he found the officer at fault. He explained that what Chief Scagnelli would be looking at are "summonses, are we issuing the correct summonses in order to bring down the accidents or what is causing the accidents." The Respondent further stated he not only witnessed his peers being admonished by Chief Scagnelli, he was also admonished by Chief Scagnelli at the TrafficStat meetings.

On re-direct examination, the Respondent stated that TrafficStat meetings are delegated to the X.O. If the X.O. is not available then the C.O. must attend. When it comes to CompStat meetings, however, only the C.O. must attend. Normally the X.O. does not go, unless directed to attend the CompStat meeting. When asked if he had a choice, would he rather answer for crime spikes or accidents spikes, he replied, "I fight crime. I would rather talk about crime." He added that you cannot minimize the attention paid to traffic because that saves lives, especially with accident reduction. He added, "But our focus, the commanding officer's focus, is on the reduction of crime. That is in fact one of my directives as an executive officer, the reduction of crime." He further explained, "I would rather answer for the accident because there I have a lot that I can explain, such as I mentioned before, was it a weather condition, was it a fact that my officers were not issuing the correct summonses."

The Respondent was then asked what impact his prior experience on vandalized RMPs in the Bronx had in his assuming that this case involved criminal mischief. He explained:

I review 61s constantly and that was something that I saw a lot of in the Bronx, mirrors, mirrors, windshields, mirrors. This was not uncommon that this was occurring. We have volumes of criminal mischief to autos and as I mentioned before, the community, because it's a nuisance crime it occurs. The fact I've seen RMPs get vandalized [was] on my mind when I made my decision. But

the duty to investigate is not my duty, it's the supervisor's. That's why I told him to 61, 49. The 49 is about investigation...The 49 explains what actually occurred to us, to me if I had been there and not gone on vacation, what actually occurred to that vehicle. That's what the 49 is all about...It's his investigation, whoever the supervisor investigation is. This is something we do constantly when vehicles get vandalized or when vehicles get destroyed, a 49 is a must to go to Fleet Services to indicate what happened, because that is the next step,...besides the 61, how they call the repair for the vehicle.

FINDINGS AND ANALYSIS

The Respondent is charged with conduct prejudicial to the Department by failing and neglecting to conduct a thorough and complete investigation into a vehicular accident that had been reported to him by members of the service under his supervision.

The Assistant Department Advocate (Advocate) clarified and supported the Department's basis for the charges during his opening statements where he informed this Court that Germosen and Grullon were at the station house and Grullon, after being asked by the Respondent what they were doing there, told the Respondent "in substance" that an RMP was involved in an accident and he was filling out the PAR. "Before he could say anything else the captain essentially said "don't do a PAR, do a 61 for criminal mischief." The Advocate further stated that the Respondent "may or may not have said [something] to do with an unknown perpetrator, and the captain may or may not have said, 'I don't want to answer for this at traffic stat.'" The Advocate further clarified the Department's position by stating that "Both the sergeant and the police officer complied with the captain's direction. Both felt that it was an improper direction but they felt at this point, given how they felt about the captain, that it was best to simply do what he

said, so they did. They didn't tell the captain anything further, the captain gave a very stern, strict direction and they complied."

According to the Advocate, "the captain directed a report of a crime, a complaint report, with absolutely no evidence presented to him at all of criminal conduct...he did not ask any follow-up questions; did not look at the RMP; did not ask to see photographs; he did not ask what circumstances of the accident were; he did not ask if anyone was injured; he did not ask anything. All he said to do was prepare a police department report indicating that a crime occurred."

The Advocate further stated in his closing statement that the Respondent was told by the officers that they were in an accident and a truck took off the mirror and "Having been told what happened, he didn't just say to do something that was correct, he essentially said, look don't do a PAR. Do a 61. Criminal mis."

At the outset, it is not in dispute that the RMP was involved in an accident with a truck while it was double parked. What is in dispute is whether the information or facts regarding the damage to the RMP was clearly reported to the Respondent, by Grullon, as an accident involving a truck and whether the Respondent after learning that the RMP was involved in an accident gave instructions to Grullon that were prejudicial to the Department because he failed to "conduct a thorough and complete investigation" of the incident.

Grullon (and Germosen) testified that he told the Respondent that an RMP was involved in an accident with a truck. The Respondent testified that he was only informed by Grullon that there was an RMP with a damaged mirror outside of the station house. I

find the Respondent Not Guilty because I credit his testimony over the testimonies of Germosen and Grullon.

This Court disagrees with the Department's position for two reasons: the first is that Germosen and Grullon did not convince this Court that Grullon actually told the Respondent that a truck was responsible for damaging the RMP and second and more important is that it was not the Respondent who was required to conduct a thorough and complete investigation of the damage to the RMP—that job belong to his patrol supervisor, Sergeant Grullon.

Germosen and Grullon gave lengthy testimonies as to what transpired between them and the Respondent at the station house. Initially, they both stated that it was made known to the Respondent that the RMP was involved in an accident with a truck. But the longer they responded to questions the more it appeared to this Court that Grullon left out the fact about the truck causing the damage to the RMP.

It became apparent to this Court that Germosen, during his testimony, was not sure as to what was actually said at the station house between Grullon and the Respondent. He testified that after taking the photographs of the RMP at the Throgs Neck Bridge they then went back to the station house to finish the paperwork and "make some notification with regards to the vehicle being in the accident." At the station house Germosen stated that they were sitting in the 124 room finishing the paper work and noted that Grullon was sitting in front of him. He did not "know exactly" what Grullon was doing but believed he "was writing some of the notifications that he needs to make or make his phone calls." He also stated that Grullon "was doing a PAR." At one point he saw the Respondent come out of his office wearing his uniform and approach the area

where Germosen was. When the Respondent was approximately 10 feet away from them he asked "What are you doing?"

According to Germosen, he did not speak to the Respondent; it was Grullon who did the talking. He recalled Grullon telling the Respondent "We were doing paperwork with regard to what happened to the vehicle." Germosen testified that the paperwork Grullon was referring to was the PAR. He admitted that he did not know "verbatim" what Grullon said "but it was in regard to the PAR or the police accident report." When he was asked if he recalled if Grullon mentioned the side view mirror he replied "that it got knocked off by a truck." When asked if he remembered anything else that Grullon said he replied "I don't recall." When asked what the Respondent said he replied "Not to do a PAR. When asked what were the words the Respondent used he replied, "Don't do an accident report do a 61..."

Germosen did not recall the Respondent asking any additional questions about the accident. He also could not recall the Respondent using the words criminal mischief or crim. mis., or "unknown person." When further asked if he was sure that Grullon said that the mirror was knocked off by a truck or was he just guessing, he stated that he was not guessing. But when it was pointed out that during his official interview of March 29, 2007, that he told investigators "That's when I guess the Sarge explained what we got. RMP mirror got the mirror knocked of by a truck." Germosen did not "recall right now if I said that" but he did not dispute the statement. When further asked if he was sure what the Respondent was told by Grullon, he replied "I need to refresh" as in his memory.⁵

⁵ It was at this point that the Court reminded the parties that Grullon would be testifying and he would give a first hand account of what he said to the Respondent.

Germosen was also unsure of what happened to the paperwork and the photographs. While he claimed to have filled out the PAR, he had "No idea" what happened to it because he "gave it to the Sarge." While he also claimed to have taken the photographs, he had no idea at what time he took them and never saw them again after taking them. Needless to say, the PAR and photographs are important pieces of evidence that would have supported Germosen's version of what occurred. Yet, he has no idea what happened to those documents and apparently, if they did in fact exist, he had no intention of preserving them.

Germosen testified that he thought it was wrong for the Respondent to tell him to do the 61 because it was an accident and not a crime, but he nevertheless neglected to inform the Respondent of his beliefs, either at the time they were at the precinct or any time later. He also neglected to report the Respondent to the Internal Affairs Bureau for giving an unlawful order as he is required to do. His excuse was that it was because it was a captain that was telling him to do something.

Germosen admitted that when he prepared the 61 it was his own words on the report. The Respondent did not tell him to write "unknown perpetrator" or "criminal mischief." Rather, he wants this Court to believe that once he heard the Respondent say "do a 61" he interpreted that to mean criminal mischief from an unknown perpetrator. According to Germosen, the Respondent did not have "to state it specific like that ... It was the order that that's what it meant." He then concocted a story on the 61 that read "At T/P/O (time place of occurrence) while on a job veh. (vehicle) was double parked upon returned (sic) vehicle driver side view mirror was broken. Unknown how it happened (possible criminal mischief)."

Germosen's testimony does not, with any degree of certainty, convince this Court that the Respondent was informed that the truck was responsible for the damage to the RMP. At times, he did not remember "verbatim" what was said, he had no idea what happened to the documents and photographs he claims to have prepared. Moreover, it is more likely than not that when he saw Grullon talking to the Respondent that he "guessed" that he was telling him about the truck and further guessed that the Respondent meant for them to write up a false report using the words "criminal mischief" and "unknown perpetrator" in a false scenario as to what happen to the RMP. His credibility is also tainted by the fact that he simply excuses himself from any responsibility for submitting the false police report by hiding behind the fact that it was a captain who told him not to do a PAR.

Grullon testified that when he arrived at the station house he was in the 124 room located on the right side and facing the front desk. He stated that the 124 room is "not really a room" just a designated area. He was sitting at one of the desks and as far as he could recall Germosen was also sitting at one of the desks.

At one point Grullon observed the Respondent approach, dressed in his uniform, and was about 12 feet away when he (Respondent) spoke to Grullon. He stated that the Respondent asked "What are you doing here?" He only asked him once in a normal "but loud and clear" voice. Grullon stated that he then explained "the scenario in a short statement, that we had, while on the job, a truck came and actually hit our driver side mirror, it was broken." When he was directly asked if he actually said to the Respondent that a truck knocked off the driver side mirror he became vague and replied "In sum and substance, yes I did." Sum and substance could mean some other words indicating

damage to the RMP with actually stating accident with a truck. When asked if he indicated anything else, he replied "No, I don't think it got any further than that."

Grullon also stated that "after mentioning what happened in response to his (Respondent's) question, we stated that we were doing paperwork with regard to the accident." When asked if he actually said "paperwork, police accident report, PAR or something else," he did not "recall" what he said. As they spoke to each other, he faced the Respondent and noted that he again did not recall if the accident report was on his desk at that time. He explained his lack of memory by stating that "I've got to mention too in between this, I was busy with a missing with a special category missing, a child that I was looking for so I was focused on that and listening to the radio so I can't recall."

When Grullon was asked, what if anything, did the Respondent say back to him after telling him about the truck, he again indicated his lack of memory of what was said by stating "I don't remember the exact words. It was to the effect that the precinct had too many accidents already and he did not want to respond to that in CompStat and subsequently he wanted us to disregard the PAR and to do a 61 for criminal mischief." When further asked if the Respondent said too many accidents or a lot of accidents or words to that effect he replied "Words to that effect. I can't remember exactly what he said precisely." He remembered that the Respondent said to do a 61 and claimed to "clearly" remember "criminal mis." But when he was asked if the Respondent said who should be indicated as the perpetrator in the 61 he replied "I don't recall all those details."

Grullon further indicated that he did not have any idea as to what happened to the police accident report that Germosen started but never finished. Nor did he know what happened to the photographs that he claimed were taken at the Throgs Neck Bridge. As

far as he could remember the PAR “was in my hand at one point or another” and the photographs were “probably...in my hands at one point or another.” When asked by the Court what he did with the PAR and photographs he stated “that part I don’t recall.” He then stated that “As far as I remember, gave back to Germosen...with the accident report” and then qualified his answer by saying that he did not keep them and if he did he did not remember where he put them.

Grullon’s vague and unconcerned answers of “I don’t recall” as to what happened to those documents and other details of what was said during his conversation with the Respondent leaves this Court with considerable doubt as to the veracity of his testimony concerning the truck and the Respondent’s statement about too many accidents and CompStat.

Moreover, Grullon’s veracity was also challenged when it was pointed out to him that he did not tell investigators during his official interview about the truck. His nonchalant answer of “it’s possible” that he did not refer to the truck where he stated to investigators that we “encountered the Captain and he asked us what we were doing at the station house and we explained to him what we had and he told us not to do a PAR” leaves this Court to further doubt that he mentioned truck to the Respondent. Grullon also acknowledged that he failed to mention CompStat to IAB with regard to what the Respondent said and also did not mention that the Respondent told him that the 42 precinct had too many accidents. The Advocate argued that he was not asked about the truck therefore did not address it. But the truck is germane to how the RMP was damaged and no questions about it should have been required for him to include that important fact in his explanation.

Consequently, this Court is again left with testimony that does not, with any degree of certainty, convince this Court that the Respondent was ever informed that the truck was responsible for the damage to the RMP. He left out that important fact during his official interview which was conducted closer to the time of the accident when his memory should have been fresher. It is, therefore, conceivable that he left out the fact about the truck at the station house. More importantly, Grullon had an obligation to clear up any possible misunderstanding of the facts he gave to the Respondent by going back to him and unequivocally explaining what occurred. He failed to do this. Instead, he drafted a 49 and made up a false scenario of what occurred. In that 49, he fabricated that "On Thursday, November 10, 2006, 42 Pct. Patrol Supervisor, Sgt. Grullon tax # 921401 and vehicle operator, PO Germosen tax # 931490, responded to a 10-10 missing at [REDACTED] Avenue, Bronx, NY MOS parked RMP # 2535 in front of aforementioned location. Upon returned (sic) MOS found vehicle's driver side mirror broken." Canvass for witnesses revealed negative results. Information as to how mirror was broken is unknown. Complaint report prepared for criminal mischief, (# 2006-042-09490) For your Information." The Respondent never told him to use these words. This story came directly from Germosen.

It is important for this Court to note that when the credibility of a witness' testimony is an important consideration in tipping the scales for one side or the other, it is not credible for a witness to seem to clearly remember a fact that might mitigate or excuse him of wrongdoing (the truck hitting the RMP) and then become vague or not remember most of the other facts or leave out important facts in a prior interview (the truck, CompStat or TrafficStat). Credibility is the main issue in this case and Grullon

failed to prove his credibility to this Court and therefore failed to convince this Court that he informed the Respondent about the truck striking the RMP.

In contrast, the Respondent credibly testified that he recalled seeing Grullon in the station house "in full battle regalia" and asked him "What are you doing, what you got?"—a typical question he would ask any of his supervisors as he walked into his station house. According to the Respondent, Grullon told him that "there is a mirror missing from one of the RMP's outside." The Respondent's answer was "Ok, make sure that you do a 61 and a 49." When Grullon told him about the missing mirror, the Respondent believed he was referring to an RMP or one of the cars outside of the station house. The conversation between him and Grullon lasted "a few seconds" and in the Respondent's experience "Missing mirrors, whether it be a Department auto or whether it be a civilian auto in the street, is a very common occurrence, not in the Bronx only, everywhere that I have patrolled, that I have been at." He noted that the term or classification used for missing mirrors in "criminal mischief," not "vandalism" and that is what is normally charged for those types of incidents.

The Respondent, in further explaining his response to Grullon, stated that "When somebody tells me something, I normally come back with a reinforcement instruction. In this case, I told Sergeant Grullon... 'make sure that 61 and 49 was done.' That was the extent of my conversation with Sergeant Grullon." Once he was given this instruction, Grullon "never came back to me and said, 'Hold on, boss' which I normally hear a lot in my capacity, 'Hey, boss, it didn't happen ... This is what is going on, this is what I am doing.'... Sergeant Grullon never, never came back to me and said, 'hey, boss wait a minute, that car was involved in a car accident.' He did not utter a word to me. He just

looked at me and went about his business and I went about my business. That was the extent of my conversation with the sergeant.”

The Respondent also testified that he never mentioned the words “CompStat” or “TrafficStat” to Grullon and Grullon never told him that an RMP driven by Grullon and Germosen had been involved in a motor vehicle accident with a truck. Moreover, he does not recall ever seeing Germosen and never acknowledged him during his conversation with Grullon.

This Court became aware through the testimony of Scagnelli and the Respondent that precinct commanders are not punished for the type of accident that the RMP in this case was in. The Department, according to the testimony, is mainly concerned with accidents where officers are at fault while operating their vehicles and where there are injuries. Therefore, this Court finds it highly unlikely that the Respondent would have blurted out a concern about CompStat or TrafficStat at the front desk and order false police reports to be filed when he had nothing to fear from the Department for this type of accident, especially if he was in fact informed of the truck striking the RMP.

The Respondent was officially interviewed on April 13, 2007. He admitted that at that time he did not remember every detail of his conversation with Grullon. He remembered “that I said that I was aware of speaking to Sergeant Grullon and I was aware of an accident but as I further went into the testimony I realized that it wasn’t that there was an accident but there had been an incident with a vehicle. So being that I was there for the first time listening to this accident accusation ...it dawned on me that as I am going through the testimony that I was the subject, that it was towards me rather than the scope of what happened to Germosen or Grullon, because again I had no idea who the

subjects were other than me.” He further stated that as the interview “progressed, it was an incident that I was told by Sergeant Grullon, not an accident.”

The Respondent further testified that a short time later he acquired and reviewed the paperwork filed in this case, including Grullon’s 49 and Germosen’s 61, and the paperwork from the automotive repair department. From these documents and some reflection, he recalled what was said between Grullon and himself. This Court found, however, that even with his admitted limited memory, the answers that he gave at the interview were still very consistent with his testimony at trial. For example, at one point he stated to the investigator “The recollection of that conversation (with Grullon) was that there was some damage to some part of the vehicle, of the RMP, when they went out to look at the RMP.” When he was then asked if Grullon told him how the vehicle was damaged he replied “No.”

At another point in the interview he explained, “The conversation as far as I can recollect, because I have nothing written down, was that there was damage to the vehicle when they went to see the vehicle. I don’t remember if it was a mirror or if there was some damage to the vehicle, that’s not uncommon because we always have damage to the vehicles especially in front of the precinct.”

The Respondent also testified that since he has been at the rank of captain he has never inspected a Police Department vehicle that had been involved in a property-damage-only accident because “that’s not one of our duties.” He readily admitted, however, that it was his duty as a sergeant and lieutenant to conduct such investigations.

He also readily acknowledged that he did not ask Grullon how the mirror became broken. He explained that “I left that up to the Sergeant Grullon...If I were to look at

every 61 that says Criminal Mischief...I would never leave the station house...One of the key steps to my supervisors is the fact that they are empowered to do investigations.”

That’s why I told the sergeant, ‘61 and 49’, because that’s exactly what the 49 is...it’s his investigation as to what transpired. That is not my duty. So when I said 61 and 49, I did them as a sergeant, I did them as a lieutenant, I did 49s when things were broken, but not as a captain. I empower my supervisors to do that. Now if he did not mention anything to me, I am not a mind reader. He has to have the -- he has to be empowered to tell me what is happening.”

The Respondent’s testimony regarding who is responsible for investigating damage-only accidents is in agreement with this Court’s second reason for disagreeing with the Department’s basis for the charges. It is apparent that the charges place no responsibility on Grullon, a sergeant and a front-line patrol supervisor, for insisting on making it absolutely clear to the Respondent, exactly what happened to the RMP. The charges as drafted made it the Respondent’s responsibility to take investigative steps or to ask some sort of probing question before he instructed Grullon as to which direction he should take. This Court unequivocally disagrees with these assertions. In this Court’s opinion, it was initially the responsibility of Grullon (and also Germosen) to explain to the Respondent that the instructions he gave them was wrong because they were at the scene and were fully aware that those instructions did not fit the event. The fact that the Respondent is a superior officer does not excuse Grullon and Germosen for failing to correct his directions and further excuse them for filing incorrect and false police reports. If it was that difficult for Grullon and Germosen to correct the Respondent’s instructions

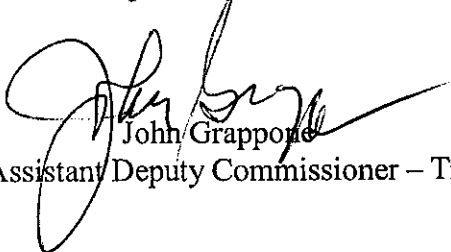
because he was a superior officer then they should have contacted IAB before filing those false reports.

Moreover with regard to the Respondent conducting an investigation, Grullon was in agreement with the Respondent where he unequivocally acknowledged that an accident involving a Department vehicle where no physical injury occurs, the patrol supervisor is responsible for conducting an investigation into the accident including the interviews of all persons involved in the accident and any witnesses to the accident. It is also the opinion of this Court that if the executive officer of a precinct was to take time from his managerial duties and investigate every minor accident to RMP's under his command he or she would be hard pressed to keep his or her precinct running at the high level of professionalism expected by the Department.

Therefore, as Grullon acknowledged, it is for the patrol supervisor to conduct such investigations and report his/her finding to the executive officer. Once Grullon failed to do this, the responsibility did not then shift to the Respondent.

Based on the foregoing, I find the Respondent Not Guilty as charged.

Respectfully submitted,


John Grappone
Assistant Deputy Commissioner – Trials

APPROVED

JUN 23 2009
RAYMOND W. KELLY
POLICE COMMISSIONER